THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24008 of 2001

Between:

Narthaki Theatre, Khammam

And others

… Petitioner

AND

Films Division, Ministry of Information and Broadcasting,

Government of India, rep. By its Branch Manager, Hyderabad

And another

… Respondents

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WRIT PETITION No.24008 of 2001

ORDER:

The petitioners are cinema theatres in Khammam and Kothagudem. They filed the writ petition seeking a writ of Mandamus declaring condition Nos.41 and 42 of B-Form licence as illegal and unconstitutional, and for a further declaration that the second respondent cannot insist upon the production of 'No objection certificate' from Films Division, Ministry of Information and Broadcasting, Government of India. Further, that the first respondent is not entitled to demand and collect weekly rentals from them.

Heard the learned Counsel for the petitioners and learned Standing Counsel for the first respondent. None appears for the respondent No.2.

A Division Bench of this Court (to which I was a member) in **MAHESWARI 70 M.M. THEATRE v. FILM DIVISION, MINISTRY OF INFORMATION AND BROADCASTING, HYDERABAD & ANOTHER** (W.A.No.298 of 2001 and batch dated 21.8.2001) considered the validity of condition Nos.41 and 42. This Court held that condition No.42 is not mandatory and it is only directory and that if the short films are supplied to the theatres, they are liable to pay the amount to the Films Division. It was also held that unless and until the amounts payable by the petitioners is determined, the State cannot refuse to renew the cinematograph licence to the petitioners. It was observed therein as under.

> An agreement can be express or implied. If short films have been supplied to the appellants they would irrespective of the legal position are liable to pay the amount in question to the Films Division. Even if the conditions of the licence as contended by the appellants were found to be invalid, they would still be liable in terms of Sections 65 and 70 of the Indian Contract Act. In fact, on their own showing the appellants had also been paying the said amount after the decision of the Supreme Court. We, therefore, are of the opinion that the liability of the appellants has to be determined on resolution of the dispute as to whether short films had been supplied to them or not. Such dispute has to be determined in an appropriate forum and not in a writ proceeding. It is needless to say that the State cannot refuse to renew the cinematograph licences of the appellants unless conditions precedent therefore are not satisfied.

Following the judgment of the Division Bench, this writ petition is also disposed of with the aforementioned directions and observations. No costs.

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(**V.V.S.RAO,J**)

January 28, 2006.

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